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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/054,093

01/22/2002

Linh M. Bui

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3598

26271 7590 04/20/2007  
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EXAMINER

VU, JAKE MINH

ART UNIT

PAPER NUMBER

1618

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/20/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/054,093	BUI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jake M. Vu	1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 8-12 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8-12 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Receipt is acknowledged of Applicant's Amendment and Request for Continued Examination filed on 02/22/2007. Claims 1-3, 8-12, and 17 are pending in the instant application.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/22/2007 has been entered.

#### ***Double Patenting***

Claims 1-3, 8-12 and 17 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over copending Application No. 10/264,886 and 10/891,895 **are maintained** for reasons of record filed on 02/10/2006 in the previous office action.

Note, it is acknowledged that Applicant request that this rejection be held in abeyance until the conflicting claims are in fact patented.

***Claim Rejections - 35 USC § 103***

Claims 1-3, 8-12, and 17 rejected under 35 U.S.C. 103(a) as being unpatentable over HAND et al in view of CUNNINGHAM **are withdrawn** in view of Applicant's amendment filed on 02/22/2007. However, upon further consideration, a new ground(s) of rejection is made as discussed below.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 8-12, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over HAND et al (US 5,431,927) in view of REMMEREIT (US 6,042,869).

Applicant's claims are directed to a process for producing a pet food product comprising the steps of adding: 35-70% of protein; 4-10% of fat; 5-25% of fiber; 10-35% of carbohydrate; and 0.1-1% of a functional ingredient, such as conjugated linoleic acid. Wherein, the fat comprises of essential long-chain fatty acids and the composition is a dry or semi-moist pet food.

REMMEREIT disclosed a dry or semi-moist dog food comprised of functional ingredients, such as 0.1-2.5% of conjugated linoleic acid (see col. 14, line 1-50; col. 3, line 22-35; and abstract) and linoleic acid (see col. 3, line 28), which is an essential long-chain fatty acid. REMMEREIT further disclosed that the addition of conjugated

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linoleic acid in pet food increases the lean to fat ratio, effectively reducing body fat, and increases feed conversion efficiency in animals (see col. 1, line 55-64). REMMEREIT disclosed the dog food further contain meat, soy, animal fat, and wheat, which are protein, fiber, fat, and carbohydrate (see col. 14, line 1-49).

However, REMMEREIT does not disclose the actual percentage of the protein, fat, fiber, and carbohydrate in the dog food.

HAND disclosed a typical pet food (see col. 8, line 32) product comprised of: 10-35% of protein; 10-20% of fat; 10-25% of fiber; and 35-70% of carbohydrate, which are within Applicant's ranges.

It would have been obvious to the person of ordinary skill in the art at the time the invention was made to incorporate the ranges of 10-35% of protein; 10-20% of fat; 10-25% of fiber; and 35-70% of carbohydrate into REMMEREIT's dog food composition. The person of ordinary skill in the art would have been motivated to make those modifications, because these percentages are typical ranges in pet food, and reasonably would have expected success because REMMEREIT disclosed dog food that contain protein, fat, fiber, carbohydrate, and conjugated linoleic acid.

Note, the intended use of the claimed composition, such as comprehensive weight management, modulates metabolism and builds lean muscle mass, has not been given patentable weight, because the prior art compositions would be at least capable of performing said use.

***Telephonic Inquiries***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jake M. Vu whose telephone number is (571) 272-8148. The examiner can normally be reached on Mon-Fri 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jake M. Vu, PharmD, JD  
Art Unit 1618

  
MICHAEL G. HARTLEY  
SUPERVISORY PATENT EXAMINER